OFFICE OF UNIVERSITY COUNSEL

UNIVERSITY COUNSEL GUIDELINES RELATING TO RETENTION OF OUTSIDE COUNSEL FOR PROCESSING PETITIONS TO SPONSOR FOREIGN NATIONALS FOR EMPLOYMENT-BASED IMMIGRATION STATUS

IMPORTANT: IT IS THE RESPONSIBILITY OF THE FOREIGN NATIONAL EMPLOYEE TO MAINTAIN LEGAL STATUS IN THE UNITED STATES. UNM DEPARTMENTS NEED TO BE AWARE THAT THE PROCEDURES TO OBTAIN VISA OR IMMIGRANT STATUS ARE COMPLICATED AND TIME CONSUMING. THEREFORE, UNM DEPARTMENTS DESIRING TO SPONSOR FOREIGN NATIONAL EMPLOYEES MUST START THE PROCESS EARLY AND WORK CLOSELY WITH THE FOREIGN NATIONAL AND A UNM CONTRACT IMMIGRATION ATTORNEY.

Pursuant to UNM Regent's Policy 2.16, University Counsel promulgates the following guidelines relating to University Departments' retention of contract counsel for purposes of sponsoring a prospective or current faculty or staff employee for authorization to work in the United States. **The Office of University Counsel does not process visa or immigrant matters**; rather, the University contracts with immigration attorneys who, in conjunction with the Departments, gather all relevant facts and process the University's petitions to sponsor foreign nationals for authorization to work in the United States. The role of the Office of University Counsel in processing employment-based immigration petitions is to review the petitions for legal and policy compliance and factual accuracy and to give final approval on the petition as the University's designated signatory.

TERMINOLOGY

Beneficiary - prospective or current UNM employees that the University sponsors or proposes to sponsor for nonimmigrant visa status (i.e. H-1B or O petition or employment-based permanent residency petition) based upon actual or prospective UNM employment.

Contract Counsel - UNM preapproved immigration attorneys who, pursuant to a contract between them and the University, prepare and file visa/immigration paperwork on behalf of UNM as sponsoring employer. Contract Counsel's work is routed through OUC where it is reviewed and signed by a designated OUC attorney, after confirmation of the employment facts from the hiring department and the ultimate hiring authority for the position (faculty - Faculty Contracts or HSC Academic Affairs, and staff - Human Resources).

OUC – UNM's Office of University Counsel. OUC provides oversight of the processing of petitions seeking to sponsor foreign nationals for visa/immigration matters pertaining to employment-based nonimmigrant visa petitions (H-1B and O) and employment-based petitions for permanent status. An OUC attorney reviews and signs visa/immigration paperwork on behalf of UNM for filing with the federal government, thereby confirming the facts represented in the petition. **All H-1B, O, and employment-based permanent status petitions must be routed through OUC for review and signature. Such petitions signed by persons other than the designated OUC attorney are improper and will result in further review and revision, thus imposing further monetary and time cost on the department proposing to hire the proposed Beneficiary.**

Petition **–** The University's application to the federal government seeking to sponsor the Beneficiary for authorization to work in the United States. For purposes of these guidelines, petitions most often come in the form of petitions for H-1B or O nonimmigrant visa status or employment-based petitions for permanent residency. For purposes of these guidelines, "petition" does not refer to applications for student visas (i.e. F-1 visas), "cultural exchange" visas (i.e. J-1 visas), national interest waivers, or any other non-employment-based immigration status applications.

PROCEDURE

UNM Departments may select Contract Counsel from UNM's preapproved list of qualified immigration attorneys, which may be found at: https://counsel.unm.edu/resources/immigration-matters.html. The Department seeking to sponsor a new or continuing Beneficiary for authorization to work in the United States must pay all attorney and filing fees as well as associated expenses that are mandated by law to be the sponsoring employer's responsibility. The Contract Counsel selected to handle a specific immigration matter will advise the hiring Department which filing fees, attorney fees, and associated expenses constitute the employer's legal responsibility. OUC reviews all agreements between the Department and Contract Counsel to ensure legal compliance.

As the hiring authority and entity responsible for paying all legally-mandated costs and fees associated with employment-based immigration sponsorship, the Department has the ultimate authority and responsibility to decide which Contract Counsel will process the sponsorship petition on its behalf. However, the Department may work in conjunction with the Beneficiary to select an attorney from the approved list of Contract Counsel to perform the work associated with the petition. The Beneficiary, Department, and Contract Counsel work together to determine appropriate visa/immigration status to be petitioned for and identify appropriate documentation necessary for the processing of the petition.

The Department and Contract Counsel negotiate payment of visa/immigration related expenses, including attorney fees and costs. The Department memorializes the payment arrangements in correspondence to the beneficiary with copy to OUC, which may be the employment offer letter (as referenced in UBPPM # 3210, Section 4) or an email detailing the terms and scope of Beneficiary's employment and the services to be provided by Contract Counsel and costs associated therewith. Contract Counsel and the Department memorialize the agreed-upon terms of payment and scope of representation in the Employment Authorization ("EA") form to be provided by Contract Counsel. At a minimum, the EA must explicitly state that the Department authorizes the matter and describe the payment arrangements, including the Banner Code(s) to be charged. **PLEASE NOTE: No payment for services will be processed for work performed by Contract Counsel until OUC reviews and approves the EA.**

The EA should substantially be in the following format:

Current Date
Immigration Attorney Control Number
EMPLOYMENT AUTHORIZATION for Immigration Legal Services

I, **NAME OF CHAIR/DIRECTOR AND DEPARTMENT** of the University of New Mexico, do hereby confirm that we are offering employment to **NAME OF BENEFICIARY** and authorize **NAME OF CONTRACT COUNSEL**, to represent UNM and provide legal services to include: **DESCRIPTION OF IMMIGRATION SERVICES** on behalf of **NAME OF BENEFICIARY**. The total legal fees agreed upon for said services are **AMOUNT OF FEES** plus tax and expenses, filing fees to be billed immediately, legal fees to be billed after filing with the appropriate federal government department. The University of New Mexico will be billed under **BANNER INDEX NUMBER.** All legal services are subject to Contract dated **DATE OF CONTRACT** between **CONTRACT COUNSEL** and the University of New Mexico.

_____ _____

DIRECTOR/CHAIR (NAME) Date
DEPARTMENT

_____ _____

OUC ATTORNEY (NAME) Date
OUC ATTORNEY TITLE

_____ _____

OUTSIDE COUNSEL (NAME) Date
OUTSIDE COUNSEL FIRM DETAILS

The EA is then submitted to OUC for review and approval as an attachment to an email describing the details of the petition to be processed. The email should substantially be in the following format:

Attached to this email is the Employment Authorization for **CONTRACT COUNSEL NAME** being submitted by **DEPARTMENT NAME** for immigration-related services pertaining to UNM's employment of **BENEFICIARY NAME**.
Below find the pertinent information for this case:
Name of Foreign National Seeking Services: **NAME OF BENEFICIARY**
UNM Department where the FN will be employed: **UNM DEPARTMENT NAME**
Name of UNM Department contact: **DEPARTMENT CONTACT NAME AND PHONE NUMBER**
Banner Index #: **BANNER NUMBER**
Country of Origin: **COUNTRY**
Current Immigration Status: **e.g. "J-1, H-1B valid to MM/DD/YYYY, etc."**
Proposed Immigration Status: **e.g. "H-1B Change of Employer, New Employment, etc."**
Important Dates: **e.g. "Proposed start date of MM/DD/YYYY"**

Upon receipt and approval of the EA, OUC will initiate the matter in the Serengeti database, which is used by OUC to receive and process invoices from Contract Counsel. Upon agreement of fees and services, Contract Counsel provides the Department with a form to be completed by the Department, which the Department must then submit to UNM's Export Control office. **The Export Control form must be completed and submitted to the Export Control office for processing as to all petitions regardless of the Beneficiary's job title, department, etc.** OUC

will provide Contract Counsel with a blank version of the Export Control form, which Contract Counsel should provide the hiring Department when they agree upon the scope of the services to be provided.

Contract Counsel works with the Department to draft a letter of support for signature by the Chair/Director, which sets out the facts of the employment position. The Department sends a copy of that signed letter to OUC – along with all other pertinent documentation – for purposes of review and for OUC's records.

The Department and Contract Counsel work together to gather all documentation identified by contract counsel as pertinent/relevant/required for the submission of the petition. Based on such documentation and other information provided by the Department, Contract Counsel completes the petition to be submitted to the relevant federal agency.

Prior to submission, Contract Counsel provides the petition to OUC for review. OUC reviews visa/immigration paperwork for accuracy of employment facts and may contact Contract Counsel with questions or to gain clarification. Once such review is performed and the petition is approved, the OUC attorney designated as authorized representative of the University will sign the petition and return it to Contract Counsel for filing with the federal government. **No petition representing the University of New Mexico as sponsoring a Beneficiary for nonimmigrant visa status may be submitted to a federal agency without the review and approval of the OUC attorney designated as authorized representative of UNM.**